

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JESSE HARDY SWINSON III,

Petitioner,

v.

Case No. 14-C-1297

TIM HAINES,

Respondent.

ORDER GRANTING RECONSIDERATION

Petitioner has filed a motion for reconsideration of my Rule 4 dismissal of his habeas petition as a “second or successive” petition barred by 28 U.S.C. § 2244(b). In his reconsideration motion Petitioner points out that the claims in his earlier petition (which is currently pending in this court, Case No. 14-CV-484) arise out of his liberty interest in an “earned release program” under Wis. Stat. § 302.05 (2009–2010). Petitioner states that those claims were triggered by the denial of his parole in 2010. Petitioner states that the claims in the present petition, on the other hand, arise out of his liberty interest in a “substance abuse program” under Wis. Stat. § 302.05 (2011–2012). See Michael B. Brennan, *The Pendulum Swings: No More Early Release*, 84 Wis. Lawyer 4 (Sept. 2011) (discussing 2011 amendments to Wis. Stat. § 302.05). Petitioner states that the new claims were triggered by “discrete trigger events” (presumably, subsequent parole denials) that took place two years after the 2010 parole denial. (ECF No. 6 at 2–3.) Petitioner does not appear to explain why, even if the 2012 “trigger events” were not known at the time of the 2010 parole hearing, all of these claims could not have been brought in the same habeas petition filed in 2014.

Nonetheless, another line of § 2244(b) cases says an earlier petition that is not resolved on the merits does not count when determining whether a later petition is “successive” to the earlier one. *See Beyer v. Litscher*, 306 F.3d 504, 508 (7th Cir. 2002) (collecting cases). Here, because Case No. 14-CV-484 is still pending and thus has not been resolved at all, reconsideration is granted and my previous dismissal under § 2244(b) is vacated. Respondent is directed to file an answer to the petition, a motion to stay and/or consolidate with Case No. 14-CV-484, or otherwise respond within 45 days of the date of this order.

SO ORDERED this 18th day of November, 2014.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court